

To: Larry Silver[lsilver@lssh-law.com]
From: Fajardo, Juan
Sent: Thur 9/22/2016 12:24:45 AM
Subject: Diamond Alkali
Draft RD AOC September 21 2016.doc

Larry,

Attached is a redline/strikeout draft RD AOC. It is consistent with our recent conversations and given our phone call earlier today, I think this draft, absent financial assurance, is what we have agreed to and will not require any further changes.

With respect to Cash-Out Settlement Credit: In a cover letter, we will confirm to OCC that as long as OCC is performing the RD in full compliance with the AOC, it is our intention that 50%* of any cash amounts recovered in bankruptcy or other cash-out settlements for OU2 of the Diamond Alkali Site would be applied as a credit against Future Response Costs as that term is defined in the AOC. The credit arises with respect to any such cash-out settlement payments received by EPA after the Effective Date of the AOC, and up to and including the time that EPA issues the final bill for Future Response Costs under the AOC. The total credit cannot exceed 50% of the total amount billable as Future Response Costs in each billing cycle; provided however that Future Response Costs incurred by EPA as a result of Work Takeover (see Paragraphs 67, 82 and 116 of the draft AOC) are not subject to any reduction as a result of the cash-out settlement credit.

*The other 50% of any settlement amounts would be applied to reduce the total liability of parties other than the bankrupt or cash out parties (i.e., reduce EPA's total amount of unreimbursed costs for the Site).

I'll ask Alice Yeh to forward the SOW to you, Michael Anderson and Juan tomorrow morning.

Finally, I understand that Walter Mugdan and Larry Diamond spoke today and are working to resolve the financial assurance issue. I expect that they will be able to reach an agreement acceptable to both the Agency and Oxy. I do, however, think that there is a misunderstanding. It appears that Larry is under the impression that the Oxy Board was never informed that EPA was seeking at least some portion of the financial assurance to be liquid. I assume that Larry is not up to date on all the conversations that have taken place and may not have seen you September 13 email:

d. Financial Assurance – we are evaluating EPA’s proposal on Friday that OCC provide financial assurance of \$82.5 million, composed of a corporate guarantee and liquid amount. We will get back to you by the end of this week with a response. We have not yet made any changes to the FA section of the ASAO from the last draft.

I know that we both look forward to reaching an agreement under which Oxy will perform the OU2 remedial design.

Sincerely,

Juan M. Fajardo

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